

SUPERIOR COURT CRIMINAL DOCKET
(as of 06/24/1999)

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State of Delaware v. SHERMAN A CARTER
 State's Atty: FERRIS W WHARTON , Esq.
 DEFENSE ATTY: PRO SE , Esq.

AKA: NICK CARTER
 NICK CARTER

DOB 08/15/1950

Assigned Judge:

Charges:

Count	DUC#	Crim.Action#	Description	Dispo.	Dispo. Date
001	303X6881DI	IN93090845	BURGLARY 2ND	NOLP	05/25/1994
002	303X6881DI	IN93090846	PDWD CF	NOLP	05/25/1994
003	303X6881DI	IN93090847	PDWBPP	NOLP	05/25/1994
004	303X6881DI	IN93090848	CR.MIS.500-1500	NOLP	05/25/1994
005	303X6881DI	IN93090849R1	CCDW	TG	06/28/1994
006	303X6881DI	IN93090850R1	POSS.W/I/D NARC	TG	06/28/1994
007	303X6881DI	IN93090851R1	PDWBPP	TG	06/28/1994
008	303X6881DI	IN93090852	POS/DEL 1000 FT	NOLP	08/04/1994
009	303X6881DI	IN93090853	ASSAULT 1ST	NOLP	08/04/1994
010	303X6881DI	IN93090854	PDWD CF	NOLP	08/04/1994
011	303X6881DI	IN93090855	PDWBPP	NOLP	08/04/1994
012	303X6881DI	IN93091409	PDWD CF	NOLP	08/04/1994
013	303X6881DI	VN9309084901	VIOL O/PROBATN	GLTY	05/28/1997
014	303X6881DI	VN9309085001	VIOL O/PROBATN	GLTY	05/28/1997
015	303X6881DI	VN9309085101	VIOL O/PROBATN	GLTY	05/28/1997
019	303X6881DI	VN9309085102	VIOL O/PROBATN	GLTY	09/16/1997
020	303X6881DI	VN9309085103	VIOL O/PROBATN	GLTY	12/16/1997

No.	Event Date	Event	Judge
	09/03/1993	WARRANT AND COMMITMENT 90 24000.00 100	
	09/03/1993		
	09/15/1993	PRELIMINARY HEARING HELD MUNICIPAL COURT	
	09/16/1993	CASE FILED	
		KDP	
1	09/27/1993	TRUE BILL	
	10/06/1993	CONTROL FOR REPRESENTATION CALENDAR-ARRAIGNED BY 10C	
	10/08/1993	CONTROL FOR REPRESENTATION CALENDAR-ARRAIGNED	
	10/19/1993	NOTICE SERVICE/ACKNOW.RECEIPT-DISCOVERY	
	11/02/1993	CRIMINAL TRIAL CALENDAR - RESCHEDULED	
	011994		
2	11/02/1993	MOTION TO SEVER (PANKOWSKI, ESQ.)	KDP



3	11/10/1993		HERLIHY JEROME O.
	OFFICE CONFERENCE		
	RE: MTNSEV. MTN.IS GRANTED.		
	COUNTS 1 THRU 4 TO BE SEVERED.		
	COUNTS 5 THRU 12 TO BE TRIED		
	SEPARATE. (PANKOWSKI, ESQ.)	KDP	
4	11/17/1993		
	DEFENDANT'S LETTER		
		DCB	
5	11/17/1993		HERLIHY JEROME O.
	LETTER		
	(TO ATTYS.) REGARDING SEVERANCE.		
	AND SCHED.OF TRIALS.		
6	11/17/1993		HERLIHY JEROME O.
	ORDER		
	COUNTS I THRU IV ARE SEVERED &		
	SHALL BE SET DOWN FOR TRIAL 1ST &		
	THAT COUNTS V THRU XII SHOULD BE		
	KEPT TOGETHER & SHALL BE TRIED ON		
	A SUBSEQUENT DATE.	KDP	
7	12/02/1993		
	DEFENDANT'S LETTER		
		DCB	
8	12/07/1993		
	MOTION FOR REDUCTION OF BAIL		
	EDWARD C. PANKOWSKI, JR., ESQ.	KLT	
	12/21/1993		TOLIVER CHARLES H. IV
	MOTION FOR REDUCTION OF BAIL		
	(#004) DENIED	KLT	
9	12/22/1993		
	DEFENDANT'S LETTER		
		DCB	
	01/05/1994		
	STATE'S WITNESS SUBPOENA ISSUED		
10	01/12/1994		BARRON NORMAN A.
	REFERRAL MEMO		
	ED PANKOWSKI, ESQ.	DCB	
	01/12/1994		
	SHERIFF'S COSTS FOR SUBPOENA'S DELIVERED		
11	01/18/1994		BARRON NORMAN A.
	REFERRAL MEMO		
	ED PANKOWSKI, ESQ.	DCB	
	01/19/1994		TOLIVER CHARLES H. IV
	CRIMINAL TRIAL CALENDAR - RESCHEDULED		
12	01/31/1994		
	DEFENDANT'S LETTER		
		DCB	
13	01/31/1994		
	REQUEST FOR APPOINTMENT OF COUNSEL		
		DCB	
14	02/03/1994		
	MOTION FOR APPOINTMENT OF COUNSEL		
	PRO`SE	KLT	
15	02/08/1994		BARRON NORMAN A.
	ORDER TO COURT APPOINT COUNSEL		
	JEROME M.CAPONE, ESQ.	DCB	
16	02/10/1994		

ACKNOWLEDGMENT SIGNED BY COUNSEL
 JEROME M. CAPONE, ESQ. DCB
 02/10/1994
 NOTICE OF SERVICE - DISCOVERY REQUEST
 17 02/25/1994 COOCH RICHARD R.
 MEMORANDUM
 TO JEROME CAPONE, ESQ., REFERRING
 THE ATTACHED PRO SE LETTER DATED
 012794, TO HIM AS COUNSEL OF
 RECORD FOR WHATEVER ACTION HE
 DEEM APPROPRIATE. DCB
 03/18/1994
 STATE'S WITNESS SUBPOENA ISSUED
 44 03/22/1994
 LETTER
 (DATED 022594) TO DEFENDANT FROM
 MARGARET L. NAYLOR: THE CHIEF
 JUSTICE HAS DIRECTED ME TO INFORM
 YOU THAT THE COURT ON THE
 JUDICIARY WILL TAKE NO ACTION
 WITH RESPECT TO YOUR DOCUMENT
 DATED FEBRUARY 16, 1994, ENTITLED
 "OBJECTION", AS YOUR DOCUMENT
 CONCERNS THE ABOVE-CAPTIONED
 MATTERS WHICH WERE CLOSED ON
 FEBRUARY 10, 1994. KRS
 03/24/1994
 SHERIFF'S COSTS FOR SUBPOENA'S DELIVERED
 18 03/24/1994
 LETTER
 DEFENDANT'S DF
 03/30/1994 COOCH RICHARD R.
 CRIMINAL TRIAL CALENDAR - RESCHEDULED
 19 04/03/1994
 MOTION FOR REDUCTION OF BAIL
 JEROME M. CAPONE, ESQ. DF
 04/12/1994
 SHERIFF'S COSTS FOR SUBPOENA'S DELIVERED
 04/20/1994
 STATE'S WITNESS SUBPOENA ISSUED
 04/25/1994
 SHERIFF'S COSTS FOR SUBPOENA'S DELIVERED
 20 04/27/1994
 LETTER FROM DEFENDANT
 TRIAL DATE VERIFICATION CM
 04/28/1994 TOLIVER CHARLES H. IV
 CRIMINAL TRIAL CALENDAR - RESCHEDULED
 05/03/1994
 STATE'S WITNESS SUBPOENA ISSUED
 21 05/06/1994
 DEFENDANT'S LETTER
 DCB
 05/10/1994
 ARRAIGNED, WAIVED READING, ENT PLEA N GLTY
 05/10/1994
 DIVERSION & CASE REVIEW-TRACK 2-RESCHEDULED
 061694

	05/10/1994		CARPENTER WILLIAM C. JR.
	BAIL HEARING AND COMMITMENT		
	77 24000.00 010 MTNROB, GRANTED		
	(#019) REDUCED TO \$24000 SECURED		
	@10%	DF	
22	05/13/1994		HERLIHY JEROME O.
	LETTER		
	TO DEFT.	CM	
23	05/19/1994		
	DEFENDANT'S LETTER		
	REQUESTING DOCKET SHEET	MV	
24	05/25/1994		
	NOLLE PROSEQUI		
	IN93-09-0845 THROUGH -0848, WIT-		
	AVAILABILITY.	WJS	
25	05/26/1994		
	LETTER FROM DEFENDANT		
		CM	
26	05/26/1994		HERLIHY JEROME O.
	LETTER		
	TO DEFT	CM	
27	06/07/1994		GOLDSTEIN CARL
	LETTER		
	TO DEFT. TELLING HIM HE WILL BE		
	PERMITTED TO ADDRESS THE COURT ON		
	THE CONCERNS IN HIS LETTER ON		
	061694 THROUGH HIS ATTORNEY.	CM	
	06/10/1994		
	STATE'S WITNESS SUBPOENA ISSUED		
	06/13/1994		
	SHERIFF'S COSTS FOR SUBPOENA'S DELIVERED		
	06/15/1994		
	SHERIFF'S COSTS FOR SUBPOENA'S DELIVERED		
	06/15/1994		
	DEFENDANT'S LETTER		
	RECEIVED 06/16/94	KRS	
	06/20/1994		
	SHERIFF'S COSTS FOR SUBPOENA'S DELIVERED		
28	06/21/1994		
	LETTER FROM DEFENDANT		
		CM	
29	06/22/1994		
	MOTION TO SUPPRESS		
	JEROME M. CAPONE, ESQ.	DF	
	06/27/1994		CARPENTER WILLIAM C. JR.
	CRIMINAL TRIAL CALENDAR - TRIAL		
30	06/27/1994		ALFORD HAILE L.
	JURY TRIAL		
	THRU 062894.STATE NOLLE PROSEQUI		
	COUNTS 5,6,7,9,12. STATE'S MOTION		
	TO AMEND COUNT 8 GRANTED. STATE'S		
	MOTION IN LIMINE GRANTED. DEFT.'S		
	MOTION TO WITHDRAW AS COUNSEL WAS		
	DENIED. DEFT.'S MOTION FOR JUDGE-		
	MENT OF ACQUITTAL OF CT. 8 DENIED		
	JURY FOUND DEFT. GUILTY OF POSS.		
	OF COCAINE-0850, CCDW-0849, AND		

PDWBPP-0851. PSI ORDERED.

SENTENCING 080494 AT 10:00 A.M.

S/WHARTON, D/CAPONE, CR/LIEBOW

CC/ROGERS. JURY SWORN. GR

06/28/1994

PRESENTENCE INVESTIGATION ORDERED

31 07/13/1994

DEFENDANT'S LETTER

RECIEVED JULY 14, 1994_. REQUEST

DOCKET SHEET _____ EC

42 07/28/1994

LETTER FROM DEFENDANT

DCB

08/04/1994

ALFORD HAILE L.

SENTENCING CALENDAR - DEFENDANT SENTENCED

32 08/04/1994

NOLLE PROSEQUI

0852-0855 & 1409, RSN: PLED &

SENT.ON 0849 & 0850.

33 08/04/1994

ALFORD HAILE L.

SENTENCE

AS TO IN93090851 , TIS , THE

DEFENDANT IS ADJUDGED GUILTY OF

THE OFFENSE CHARGED.

THE DEFENDANT IS TO PAY COSTS OF PROSECUTION.

EFFECTIVE SEPTEMBER 4, 1993 THE

DEFENDANT IS PLACED IN THE

CUSTODY OF THE DEPARTMENT OF

CORRECTION AT SUPERVISION LEVEL 5

FOR A PERIOD OF 3 YEARS,

INCLUDING CREDIT FOR ANY TIME

PREVIOUSLY SERVED.

IF THE DEFENDANT IS PRESENTLY

SERVING ANOTHER SENTENCE, THAT

SENTENCE SHALL BE SUSPENDED UNTIL COMPLETION OF THIS SENTENCE.

AFTER SERVING 1 YEAR, THIS

SENTENCE IS SUSPENDED FOR 2 YEARS

AT LEVEL 4, INPATIENT DRUG

TREATMENT PROGRAM.

UPON SUCCESSFUL COMPLETION OF

LEVEL 4 INPATIENT TREATMENT

PROGRAM, THIS SENTENCE IS

SUSPENDED FOR THE BALANCE AT

LEVEL 3.

THE DEFENDANT IS TO BE HELD AT

SUPERVISION LEVEL 5 UNTIL SPACE

IS AVAILABLE AT LEVEL 4.

AS TO IN93090849, TIS , THE

DEFENDANT IS ADJUDGED GUILTY OF

THE OFFENSE CHARGED.

THE DEFENDANT IS TO PAY THE COSTS OF PROSECUTION.

THE DEFENDANT IS TO PAY A FINE IN

THE AMOUNT OF \$200.00 PLUS AN

EIGHTEEN PERCENT SURCHARGE FOR

SERVED FROM 9/4/93

TO

11/30/94

PLUS 30 days GT FOR

1 yrs work,

FOR THE "VICTIM COMPENSATION
FUND."

THE DEFENDANT IS PLACED IN THE
CUSTODY OF THE DEPARTMENT OF
CORRECTION AT SUPERVISION LEVEL
5 FOR A PERIOD OF 2 YEARS.

THE NON-INCARCERATIVE PORTION OF
THIS SENTENCE SHALL BE SERVED
CONSECUTIVELY TO THE NON-INCAR-
CERATIVE PORTION OF THE SENTENCE
IMPOSED IN CR.A. NO. IN93090851.

AS TO IN93090850, TIS, THE DEFEN-
DANT IS ADJUDGED GUILTY OF THE
OFFENSE CHARGED. THE DEFENDANT IS
TO PAY THE COSTS OF PROSECUTION.
THE DEFENDANT IS TO PAY A FINE IN
THE AMOUNT OF \$ 200.00 PLUS

AN 18% SURCHARGE FOR THE 'VICTIM
COMPENSATION FUND' AND A 15%
SURCHARGE FOR THE "SUBSTANCE
ABUSE REHABILITATION, TREATMENT,
EDUCATION AND PREVENTION FUND".

THE DEFENDANT IS PLACED IN THE
CUSTODY OF THE DEPARTMENT OF
CORRECTION AT SUPERVISION LEVEL 5
FOR A PERIOD OF 3 YEARS.

THIS SENTENCE IS SUSPENDED FOR 3
YEARS AT LEVEL 2 .

THE NON-INCARCERATIVE PORTION OF
THIS SENTENCE SHALL BE SERVED
CONSECUTIVELY WITH THE
NON-INCARCERATIVE PORTION OF THE
SENTENCE IMPOSED IN CR.A.NO.

IN93090849 .

AS TO ALL CHARGES THE FOLLOWING
SPECIAL CONDITIONS OF SUPERVISION
SHALL APPLY: THE DEFENDANT SHALL:
PAY THE FINES, SURCHARGES AND
COSTS ORDERED DURING THE
PROBATIONARY PERIOD.

BE EVALUATED FOR SUBSTANCE ABUSE
AND FOLLOW ANY DIRECTIONS FOR
COUNSELING, TESTING OR TREATMENT
MADE BY THE PROBATION OFFICER.
FOLLOW TREATMENT RECOMMENDATIONS
OF EVALUATOR AND/OR PROBATION
OFFICER.

D/CAPONE

S/KELSEY

CR/MILTON

CC/SPEAKMAN

KRS

08/10/1994

DEFENDANT'S LETTER

KRS

34 08/17/1994

NOTICE OF APPEAL

#314, 1994

DF

35 08/17/1994
DIRECTIONS TO COURT REPORTER FOR TRANSCRIPT
#314, 1994 DF

36 08/17/1994
LETTER
(SUPREME COURT) TO COURT REPORTER
PURSUANT TO SUPREME COURT RULE 9
(E) (IV), THE TRANSCRIPT MUST BE
FILED WITH THE PROTHONOTAY NO
LATER THAN 092694 DF

37 08/23/1994
MEMORANDUM
THE ORDER OF 110793, ORDERING
COUNTS 1 THROUGH IV OF THE ABOVE
REFERENCED CASE BE SEVERED, SHALL
BE RESCINDED DUE TO THE ENTRY OF
THE ATTORNEY GENERAL'S NOLLE
PROSEQUI ON THOSE CHARGES. IT IS
SO ORDERED: DF

38 08/24/1994 ALFORD HAILE L.
ORDER OF JUDGMENT

39 09/02/1994 KRS ALFORD HAILE L.

AMENDED SENTENCE
AS TO IN93090851, IN93090849,
NOW THIS 2ND DAY OF SEPTEMBER,
1994, IT IS THE ORDER OF THE
COURT THAT THE SENTENCING ORDER
OF AUGUST 4, 1994 IS HEREBY
MODIFIED AND AMENDED AS SET FORTH
BELOW:

IN93-09-0851, AFTER SERVING 1
YEAR, THIS SENTENCE IS SUSPENDED
FOR 2 YEARS AT LEVEL 4, INPATIENT
DRUG TREATMENT PROGRAM. THIS
SENTENCE SHALL BE SUBJECT TO
SENTAC POLICY #28.

IN93-09-0849, THIS SENTENCE IS
SUSPENDED FOR 2 YEARS AT LEVEL 2.
SPECIAL CONDITION TO ALL CHARGES:
SHOULD THE DEFENDANT RETURN TO
THE CUSTODY OF THE DEPT. OF
CORRECTIONS IN THE STATE OF
PENNSYLVANIA TO COMPLETE ANY
IMPOSED SENTENCE; UPON RELEASE
FROM SUCH CUSTODY, DEFENDANT IS
TO RETURN TO THE STATE OF
DELAWARE TO SUCCESSFULLY COMPLETE
THE TERMS OF CONDITIONS OF ANY
OPEN PERIOD OF PROBATION. SHOULD
DEFENDANT FAIL TO DO SO, A
SUBSTANTIAL PERIOD OF
INCARCERATION SHALL BE REIMPOSED.
IN ALL OTHER RESPECTS, THE
SENTENCING ORDER OF AUGUST 4,
1994 SHALL REMAIN THE SAME. JB

40 10/04/1994

LETTER
 (SUPREME COURT) TO COURT REPORTER
 THE COURT IS IN RECEIPT OF YOUR
 LETTER 092994, REQUESTING AN
 EXTENSION OF TIME UNTIL 100794.
 THE COURT HAS DIRECTED ME TO AD-
 VISE YOU THAT YOUR REQUEST IS
 GRANTED. PLEASE FILE THE TRANS.
 ON OR BEFORE 100794. DF

41 10/07/1994 ALFORD HAILE L.
 TRANSCRIPT OF TRIAL
 JUNE 27, 28, 1994 DF

43 10/17/1994
 LETTER
 (SUPREME COURT) TO PROTHONOTARY
 PURSUANT TO SUPREME COURT RULE 9
 (B) (I), THE RECORD W/TRANSCRIPT
 MUST BE FILED WITH THIS OFFICE NO
 LATER THAN 101794 DF

42 10/19/1994
 RECORDS SENT TO SUPREME COURT
 DF

43 10/25/1994
 RECEIPT RECORDS ACKNOWLEDGED BY
 SUPREME COURT DF
 12/13/1994
 LETTER FROM DEFENDANT

DSC
 DSC

44 02/14/1995 ALFORD HAILE L.
 LETTER
 "ASSESSMENT" FROM SUPERVISED
 CUSTODY UNIT, JESSIE L. WALLER,
 PROBATION/PAROLE OFFICER:
 I RECOMMEND THAT IN93090851 BE
 MODIFIED THAT MR. CARTER SERVE 6
 MONTHS AT LEVEL 3 AND FOLLOW
 RECOMMENDATION FROM SODAT FOR
 INTENSIVE OUTPATIENT TREATMENT.
 SO ORDERED 021395. KRS

45 08/04/1995
 MANDATE AFFIRMED
 #314, 1994 DF

46 08/15/1995
 MOTION FOR POST-CONVICTION RELIEF
 FILED PRO SE; REFERRED TO JUDGE
 ALFORD. WJS

47 08/18/1995
 MEMORANDUM
 GIVING FERRIS WHARTON NOTICE OF
 THE FILING OF A MOTION FOR POST-
 CONVICTION RELIEF. WJS

48 11/15/1995 ALFORD HAILE L.
 ORDER
 MOTION FOR POSTCONVICTION RELIEF
 IS DENIED. WJS

49 12/14/1995

NOTICE OF APPEAL
 #496, 1995 DF
 50 12/14/1995
 DIRECTIONS TO COURT REPORTER FOR TRANSCRIPT
 #496, 1995 DF
 51 12/26/1995
 NOTICE OF APPEAL
 (AMENDED) #496, 1995 DF
 52 12/27/1995
 LETTER
 (SUPREME COURT) TO PROTHONOTARY
 PURSUANT TO SUPREME COURT RULE 9
 (B) (II), THE RECORD MUST BE FILED
 WITH THIS OFFICE NO LATER THAN
 011696 DF
 53 12/28/1995
 RECORDS SENT TO SUPREME COURT
 DF
 54 03/12/1996
 MANDATE AFFIRMED
 #496, 1995 DF
 55 03/14/1996 ALFORD HAILE L.
 VIOLATION OF PROBATION REPORT
 ISSUE SUMMONS KRS
 04/03/1996
 SUBPOENA(S) MAILED
 56 04/19/1996 GEBELEIN RICHARD S.
 VOP SENTENCING CALENDAR, CONTINUED.
 57 04/23/1997
 SUBPOENA(S) MAILED.
 58 04/23/1997
 SUBPOENA(S) MAILED.
 05/07/1997 GEBELEIN RICHARD S.
 VIOLATION OF PROBATION. VIOLATION RESCHEDULED FOR CONTESTED VOP.
 59 05/22/1997
 SUBPOENA(S) MAILED.
 60 05/22/1997
 SUBPOENA(S) MAILED.
 61 05/28/1997 GEBELEIN RICHARD S.
 HEARING, CONTESTED V.O.P.,
 DEFENDANT FOUND GUILTY AND SENTENCED IMMEDIATELY.
 62 05/28/1997 GEBELEIN RICHARD S.
 VIOLATION OF PROBATION HEARING, AS TO VN93-09-0851-01
 THE DEFENDANT IS ADJUDGED GUILTY OF VIOLATION OF PROBATION AND PROBATION IS HEREWITH REVOKED AND SENTENCE IMPOSED AS SHOWN HEREFTER:
 THE DEFENDANT SHALL PAY COSTS, FINES, AND/OR RESTITUTION
 AS PREVIOUSLY ORDERED. EFFECTIVE AT THE END OF VN85-08-0681-01, THE
 DEFENDANT IS PLACED IN THE CUSTODY OF THE DEPARTMENT OF CORRECTION AT
 SUPERVISION LEVEL 5 FOR A PERIOD OF 2 YEARS. AFTER SERVING -0-, THE
 REMAINDER OF THIS SENTENCE IS SUSPENDED FOR 2 YEARS AT LEVEL 2. AS
 TO VN93-09-0849-01, THE DEFENDANT IS ADJUDGED GUILTY OF VIOLATION OF
 PROBATION AND PROBATION IS HEREWITH REVOKED AND SENTENCE REIMPOSED AS
 SHOWN HEREFTER. THE DEFENDANT SHALL PAY COSTS, FINES AND/OR
 RESTITUTION AS PREVIOUSLY ORDERED. EFFECTIVE AT END OF VN93-09-0851-
 01, THE DEFENDANT IS PLACED IN THE CUSTODY OF THE DEPARTMENT OF
 CORRECTION AT SUPERVISION LEVEL 5 FOR A PERIOD OF 2 YEARS. AFTER
 SERVING -0-, THE REMAINDER OF THIS SENTENCE IS SUSPENDED FOR 2 YEARS

NO JAIL TIME

AT LEVEL 2. THE SENTENCE IN VN93-09-0850-01 IS REIMPOSED TO RUN
CONSECUTIVE TO 93-09-0849-01 FOR 2 YEARS AT LEVEL 2.

S/PELAIA
D/HILLIS
CC/BENNETT
CR/MASON

64 07/03/1997 GEBELEIN RICHARD S.
CAPIAS ISSUED FOR EMERGENCY LEVEL IV
HOLD WITHOUT BAIL UNTIL HRG.

63 07/15/1997
VIOLATION OF PROBATION REPORT FILED.
08/20/1997 TOLIVER CHARLES H. IV
VOP SENTENCING CALENDAR, CONTINUED (NO DATE GIVEN).

65 09/16/1997 ALFORD HAILE L.
SENTENCE: SIGNED ORDER FILED 10/14/97.

66 09/16/1997 ALFORD HAILE L.
CAPIAS RETURNED IN SUPERIOR COURT DEF SENTENCED
09/16/1997 ALFORD HAILE L.
VIOLATION-OF-PROBATION HEARING HELD: PROBATION REVOKED
AND DEFENDANT SENTENCED AS TO VN93-09-0851-02. *JUNE 27 TO SEP 17, 1997*

67 12/02/1997 ALFORD HAILE L.
CAPIAS ISSUED FOR EMERGENCY LEVEL IV
HOLD WITHOUT BAIL UNTIL HRG. ON 121697 AT 9AM
12/16/1997 ALFORD HAILE L.
VIOLATION-OF-PROBATION HEARING HELD: PROBATION REVOKED *DEC 1, 1997 TO*
AND DEFENDANT SENTENCED AS TO *PRESENT.*

68 12/16/1997 ALFORD HAILE L.
CAPIAS RETURNED IN SUPERIOR COURT. DEF. SENTENCED

71 12/16/1997 ALFORD HAILE L.
SENTENCE: SIGNED ORDER FILED 02101998.

69 01/02/1998
MOTION FOR MODIFICATION OF SENTENCE FILED.
PRO SE - REFERRED TO JUDGE ALFORD.

70 01/14/1998 GEBELEIN RICHARD S.
TRANSCRIPT OF VOP HEARING FILED.
MAY 28, 1997

73 02/19/1998
MOTION FOR MODIFICATION OF SENTENCE FILED.
PRO SE- REFERRED TO JUDGE ALFORD.

72 02/23/1998
WRIT OF MANDAMUS FILED (PRO SE)

74 03/02/1998
PETITION FOR A WRIT OF MANDAMUS #90, 1998

75 03/10/1998 ALFORD HAILE L.
ORDER: NOW, THEREFORE, IT IS ORDERED THAT DEFT'S MOTION
FOR REDUCTION/MODIFICATION OF SENTENCE IS DENIED.
SENTENCE WAS IMPOSED AFTER A VOP HEARING WAS HELD.
ANY REQUEST FOR A CHANGE IN SUBSTANCE ABUSE PROGRAM
MUST BE MADE BY THE WARDEN.

76 04/15/1998
ORDER: (SUPREME COURT) NOW, THEREFORE, IT IS
ORDERED THAT THE PETITION FOR A WRIT OF MANDAMUS
IS DISMISSED.

77 07/01/1998
MOTION FOR MODIFICATION OF SENTENCE FILED.
RETURNED TO DEFT. - NOT SERVED ON A.G.

78 07/15/1998

MOTION FOR MODIFICATION OF SENTENCE FILED.
PRO SE - REFERRED TO JUDGE ALFORD.

79 07/21/1998

MOTION FOR CORRECTION OF ILLEGAL SENTENCE FILED
PRO SE - REFERRED TO JUDGE ALFORD.
REFERRED ON JULY 28, 1998.

80 08/14/1998

ALFORD HAILE L.

ORDER: NOW, THEREFORE, IT IS ORDERED THAT DEFT'S MOTION
FOR REDUCTION/MODIFICATION OF SENTENCE IS DENIED.
PURSUANT TO SUPERIOR COURT CRIMINAL RULE 35(), THE
COURT WILL NOT CONSIDER REPETITIVE REQUESTS FOR REDUCTION/
MODIFICATION OF SENTENCE. SENTENCE WAS IMPOSED AFTER A VOP
HEARING WAS HELD.

81 09/02/1998

ALFORD HAILE L.

NOTICE OF NON-COMPLIANCE TO RULE 61 (MOTION FOR POSTCONVICTION RELIEF)
SENT TO DEFENDANT. THE MOTION SEEKS CORRECTION OF SENTENCE RATHER
THAN COLLATERALLY ATTACKING THE JUDGMENT OF CONVICTION; SEE RULE
61(B)(2).

88 09/09/1998

LETTER FROM DEFENDANT, ENCLOSING A COPY OF A MOTION TO BE USED
AS AN EXHIBIT IN PENDING CIVIL LITIGATION IN DISTRICT COURT.

82 10/30/1998

LETTER FROM DEFT TO SHARON AGNEW, PROY
RE:ENCLOSING COPY OF PETITION FOR WRIT OF MANDAMUS PRESENTED TO THE
THIRD CIRCUIT COURT OF APPEALS.

83 10/30/1998

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS.

84 11/13/1998

LETTER FROM ELIZABETH CORMIER TO SHERMAN CARTER DCC
RE:PETITION FOR WRIT OF MANDAMUS AND MOTION TO PROCEED IN FORMA
PAUPERIS WILL BE TRANSMITTED TO THE NEXT AVAILABLE PANEL OF THIS CT.

86 11/17/1998

PETITION FOR A WRIT OF MANDAMUS. #483, 1998

85 12/30/1998

ORDER: IN THE MATTER OF A WRIT OF MANDAMUS;
CARTER'S PETITION FOR A WRIT OF MANDAMUS FAILS
TO INVOKE THE ORIGINAL JURISDICTION OF THIS COURT.
CARTER HAS NOT DEMONSTRATED THAT THE IS ENTITLED
TO ANY DUTY OWED BY THE SUPREIOR COURT, NOR HAS HE
ESTABLISHED THAT THE SUPCOURT HAS ARBITRARILY REFUSED
TO GRANT HIM RELIEF. IF AND WHEN CARTER FILES
A CONFORMING RULE 61 MOTION AND THE SUPERIOR COURT ISSUES
A FINAL DECISION ADVERSE TO CARTER, CARTER CAN CHALLENGE, ON
APPEAL THE SUPERIOR COURT'S APPLICATION OF THE PROVISIONS
OF RULE 61 IN HIS CASE. NOW, THEREFORE, IT IS
ORDERED THAT THE PETITON FOR A WRIT O MANDAMUS IS
DISMISSED.

87 01/04/1999

MOTION FOR MODIFICATION OF SENTENCE FILED.
PRO SE - REFERRED TO JUDGE ALFORD.
REFERRED ON 1/12/99.

89 01/04/1999

ALFORD HAILE L.

DEFENDANT'S LETTER FILED. LETTER TO JUDGE ALFORD RE: SENTENCING.

90 02/16/1999

DEFENDANT'S LETTER FILED. LETTER TO JUDGE ALFORD RE: SENTENCE.

91 03/04/1999

ALFORD HAILE L.

MODIFICATION OF SENTENCE. AS TO VN93-09-0851, THE SENTENCE IMPOSED ON

DECEMBER 16, 1997, IS MODIFIED AS FOLLOWS: DEFENDANT IS PLACED IN THE CUSTODY OF THE DEPT. OF CORRECTIONS AT LEVEL 5 FOR TWO(2) YEARS. THE DEFENDANT SHALL BE GIVEN CREDIT FOR TIME PREVIOUSLY SERVED. IN ALL OTHER RESPECTS, THE SENTENCING ORDER OF DECEMBER 16, 1997 SHALL REMAIN THE SAME.

92 04/15/1999

DEFENDANT'S LETTER FILED.

93 06/11/1999

MOTION FOR MODIFICATION OF SENTENCE FILED.

PRO SE - REFERRED TO JUDGE ALFORD.

REFERRED ON 6/15/99.

94 06/16/1999

MOTION FOR MODIFICATION OF SENTENCE FILED.

PRO SE - REFERRED TO JUDGE ALFORD.

REFERRED ON 6/23/99

CERTIFIED AS A TRUE COPY:
ATTEST: SHARON AGNEW
PROTHONOTARY
BY

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE
PETITION OF SHERMAN A.
CARTER FOR A WRIT OF
MANDAMUS.

No. 483, 1998

Submitted: November 30, 1998

Decided: December 9, 1998

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices.

ORDER

This 9th day of December 1998, upon consideration of the petition for a writ of mandamus filed by Sherman A. Carter ("Carter"), and the answer and motion to dismiss filed by the State of Delaware, it appears to the Court that:

(1) In June 1994, Carter was convicted in the Superior Court of possession of cocaine and two weapons offenses. Carter was sentenced to imprisonment followed by probation. Carter's conviction was affirmed on appeal. *Carter v. State*, Del. Supr., No. 314, 1994, Veasey, C.J., 1995 WL 439234 (July 18, 1995) (ORDER). Carter subsequently filed for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). The Superior Court's denial of relief was affirmed on appeal. *Carter*



v. *State*, Del. Supr., No. 496, 1995, Hartnett, J., 1996 WL 145773 (Feb. 22, 1996) (ORDER).

(2) In May 1997, September 1997, and December 1997, Carter was adjudged guilty of violating his probation and was sentenced. Most recently in December 1997, Carter was sentenced to two years at Level V imprisonment. Carter did not appeal any of those convictions and sentences. *See In re Carter*, Del. Supr., No. 90, 1998, Holland, J., 1998 WL 171110 (Mar. 25, 1998) (ORDER) (dismissing petition for writ of mandamus on basis that Carter did not challenge the May, September and December 1997 sentences in appeals to this Court). It appears from the Superior Court docket that in August 1998, the Superior Court denied a motion for reduction/modification of sentence that was filed by Carter. Again, Carter did not file an appeal. It further appears from the docket that in September 1998, the Superior Court issued a notice of non-compliance that returned a motion for postconviction relief that Carter had filed. *See* Rule 61(B)(2) (addressing content of Rule 61 motion).

(3) Carter's petition for a writ of mandamus filed in this Court, makes no mention of the Superior Court's notice of non-compliance that returned his Rule 61 motion. Rather, the petition, in general terms, takes

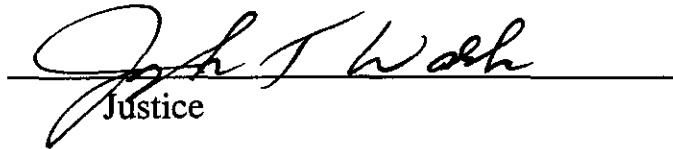
issue with the Superior Court's application of Rule 61. According to Carter, the "Judges of Superior Court are out of control[,] and "[the Superior Court] feels that it has unbridled authority to create and recreate procedural restrictions whenever it deems appropriate to reach its desired results." Carter, purporting to give "examples" of the Superior Court's "procedural violations" of Rule 61, attaches decisions by this Court and the Superior Court in cases wholly unrelated to Carter's Superior Court case. In his petition in this Court, Carter requests, on behalf of "anyone attempting review" under Rule 61, "the opportunity to regain a fair opportunity to seek relief, in the interest of justice."

(4) A writ of mandamus is issued to compel a trial court to perform a duty only if it is shown that the complainant has a clear right to the performance of the duty at the time of the petition, no other adequate remedy is available, and that the trial court has arbitrarily refused to perform its duty. *In re Bordley*, Del. Supr., 545 A.2d 619, 620 (1988). "[I]n the absence of a clear showing of an arbitrary refusal or failure to act, this Court will not issue a writ of mandamus to compel a trial court to perform a particular judicial function, to decide a matter in a particular way, or to dictate the control of its docket." *Id.*

(5) Carter's petition for a writ of mandamus fails to invoke the original jurisdiction of this Court. Carter has not demonstrated that he is entitled to any duty owed by the Superior Court, nor has he established that the Superior Court has arbitrarily refused to grant him relief. If and when Carter files a conforming Rule 61 motion and the Superior Court issues a final decision adverse to Carter, Carter can challenge, on appeal, the Superior Court's application of the provisions of Rule 61 in his case.

NOW, THEREFORE, IT IS ORDERED that the petition for a writ of mandamus is DISMISSED.

BY THE COURT:


Justice

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SHERMAN A. CARTER,

Petitioner,

v.

C.A. No. 98-173-JJF

SHERESE BREWINGTON-CARR, Warden
and M. JANE BRADY, Attorney General of
the State of Delaware,

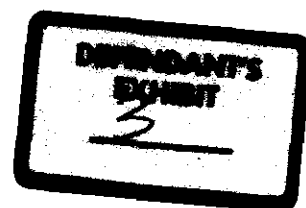
Respondents.

Sherman A. Carter, Smyrna, Delaware.
Pro Se Petitioner.

Thomas E. Brown, Esquire, Deputy Attorney General, DELAWARE DEPARTMENT OF
JUSTICE.
Attorney for Respondents.

MEMORANDUM OPINION

February 10, 1999
Wilmington, Delaware




FARNAN, Chief Judge.

Presently before the Court is a Petition Under 28 U.S.C. § 2254 For Writ of Habeas Corpus By A Person In State Custody (the "Petition") (D.I. 1) filed by Petitioner, Sherman A. Carter. For the reasons set forth below, the Petition will be denied.

BACKGROUND

In 1993, a grand jury indicted Petitioner on 12 charges stemming from three separate incidents. The first four charges -- second degree burglary, criminal mischief, possession of a deadly weapon during the commission of a felony and possession of a deadly weapon by a person prohibited -- arose from an alleged incident in May 1993 involving Petitioner's former girlfriend. The second set of charges -- first degree assault, possession of a deadly weapon during the commission of a felony and possession of a deadly weapon by a person prohibited -- arose from an alleged incident in August 1993 involving one of Petitioner's relatives. The third set of charges -- possession with intent to deliver narcotics, possession of narcotics within 1000 feet of a school, carrying a concealed deadly weapon, possession of a deadly weapon during the commission of a felony and possession of a deadly weapon by a person prohibited -- arose from an arrest of Petitioner on outstanding warrants in September 1993.

Prior to trial, the first four charges were severed and nolle prossed by the State. On the day Petitioner's trial was to commence, the State nolle prossed the three charges relating to the incident involving Petitioner's relative and the charges of possession of narcotics within 1000 feet of a school and possession of a deadly weapon during the commission of a felony. The State also amended the indictment to reduce the charge of possession with intent to deliver to simple possession. In June 1994, a Delaware Superior Court jury convicted Petitioner of possession of cocaine, possession of a deadly weapon by a person prohibited and carrying a concealed deadly

weapon.

Petitioner was initially sentenced to eight years imprisonment, suspended after three years imprisonment for five years of drug treatment and probation. In September 1994, the sentence was amended to one year imprisonment followed by seven years of decreasing levels of probation. On direct appeal, the Delaware Supreme Court affirmed the judgment of the Superior Court. Carter v. State of Delaware, 663 A.2d 486 (Del. 1995). Subsequently, the Superior Court denied Petitioner's application for post-conviction relief and the Delaware Supreme Court affirmed. Carter v. State of Delaware, 676 A.2d 901 (Del. 1996).

On May 28, 1997 and again on September 16, 1997, Petitioner was found guilty of violating his probation. (Superior Court Criminal Docket at Nos. 62 and 66). Petitioner did not appeal either of the convictions. On December 16, 1997, the Superior Court again found Petitioner guilty of violating his probation. (Superior Court Criminal Docket at Nos. 67 and 68). The Superior Court revoked Petitioner's probation and sentenced him to two years in prison suspended for probation following successful completion of a drug treatment program. (Superior Court Criminal Docket at No. 62).

Thereafter, Petitioner filed a petition for writ of mandamus with the Delaware Supreme Court. The state Supreme Court found that there was no basis for an issuance of a writ of mandamus to the trial court and dismissed Petitioner's application. In re Carter, 1998 WL 171110, *1 (Del. March 25, 1998). On April 6, 1998, Petitioner filed the instant Petition alleging that his December 16, 1997 sentence is illegal.¹ (D.I. 1 at 5).

¹ The Petition also contains three additional grounds for relief: (1) ineffective assistance of counsel; (2) prosecutorial misconduct and (3) the state writ of habeas corpus violates due

DISCUSSION

Before addressing Petitioner's claim, the Court must address two threshold issues: (1) whether an evidentiary hearing is warranted and (2) whether Petitioner has exhausted all of his available state remedies. Petitioner filed the instant Petition subsequent to April 24, 1996, the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (the "Act").

Accordingly, the Act, which amended 28 U.S.C. § 2254, applies to the instant Petition. Dawson v. Snyder, 988 F. Supp. 783, 803 (D. Del. 1997) (holding that amended § 2254 applies to any habeas petition filed after effective date of Act).

With regard to evidentiary hearings, the Act provides, in relevant part:

If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that --

(A) the claim relies on --

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.

In the instant Petition, the Court finds that an evidentiary hearing is not warranted because the

process. (D.I. 1 at 5-6). However, in Petitioner's Objection to Motion for Extension [sic] of Time (D.I. 19), Petitioner requested that the Court dismiss all grounds raised in his Petition "except for ground one, the illegal sentence." (D.I. 19 at ¶ 4). Respondents do not oppose Petitioner's voluntary withdrawal of these claims, but note that these claims are unexhausted and therefore would be subject to dismissal. (D.I. 22 at 4). The Court will permit the withdrawal of Petitioner's second, third and fourth claims. The Court notes, however, that if such withdrawal was not permitted, the Petition would be dismissed because Petitioner failed to exhaust his state remedies. See 28 U.S.C. § 2254(b)(1)(A).

Petitioner has not alleged the existence of any new rule of law or any new facts to justify his request for an evidentiary hearing. (D.I. 26 at 4). Petitioner states no reasons why an evidentiary hearing is needed on his claim, or what evidence a hearing would develop. Because Petitioner has failed to make the requisite showing under Section 2254(e)(2), the Court will deny Petitioner's request for an evidentiary hearing.

Second, in order for Petitioner to avail himself of federal habeas review, he must have exhausted all available state remedies. 28 U.S.C. § 2254(b)(1)(A). Here, Petitioner has not exhausted his claim by presenting it to the state supreme court either on direct appeal or through post-conviction proceedings. Although Petitioner presented his illegal sentence claim to the Delaware Supreme Court through an application for writ of mandamus, the state court did not expressly decide the issue. See Brown v. Cuyler, 669 F.2d 155, 158 (3d Cir. 1982) (stating that habeas petitioner may satisfy exhaustion requirement by "demonstrating that a state court has expressly decided the issues he raises in his habeas petition"). After reviewing the state record, the Court finds that the state Supreme Court did not consider the merits of Petitioner's claim when it dismissed Petitioner's application for a writ of mandamus. See In re Carter, 1998 WL 171110, *1 (Del. March 25, 1998) (holding that no basis exists for issuance of writ of mandamus to trial court and that Petitioner had "adequate opportunity to challenge the Superior Court's December 16 sentence [as well as the sentences imposed on May 28, 1997 and September 16, 1997] in an appeal"). Thus, the Court concludes that Petitioner has not exhausted his available state remedies. Nevertheless, the Court will proceed to the merits of the Petition because Respondents have expressly waived the exhaustion defense with respect to Petitioner's illegal sentence claim. See Respondents' Answer (D.I. 22 at 5); 28 U.S.C. § 2254(b)(3).

I. Illegal Sentence

In his Petition and Reply, Petitioner contends that the Delaware Superior Court improperly sentenced him for violating his probation with respect to Criminal Action No. 93090851. (D.I. 1 at 5; D.I. 26 at 2). Specifically, Petitioner contends that the probationary sentence for each of the three charges should be treated discretely. (D.I. 2). Thus, Petitioner argues, because his sentence as to Criminal Action No. 93090851 was completed in September, 1996 without any violation, he can not be sentenced for violating his probation as to that criminal action. (D.I. 1 at 5).

“The receipt of a probationary sentence is not a right guaranteed by the Federal constitution, but is a privilege granted through legislative grace.” United States of America ex rel. Sole v. Rundle, 435 F.2d 721, 723 (3d Cir. 1971). The court that is empowered, in its discretion, to place on probation a person guilty of a criminal offense, may also revoke the probation and impose any sentence it could have declared originally. Id. at 724. “The revocation of a suspended sentence and probation followed by the imposition of a prison sentence does not subject a probationer to double jeopardy.” Id.

Section 4301 of Title 11 of the Delaware Code authorizes the Superior Court to grant and terminate probationary and suspended sentences arising from criminal convictions. 11 Del. C. § 4301. Under Title 11, Section 4333 of the Delaware Code, Delaware courts may exercise their discretion in terminating probationary terms “at any time.” 11 Del. C. § 4333 (“Probation or suspension of sentence may be terminated by the court at any time”). The Delaware Supreme Court has interpreted Section 4333 “to confer broad discretion upon trial courts regarding the grant and termination of probation.” Williams v. State of Delaware, 560 A.2d

1012, 1015 (Del. 1989); See also Larson v. State of Delaware, 1995 WL 236650, *1 (Del. April 13, 1995) (rejecting argument that appellant's sentences for each charge be treated separately and, because appellant finished his first period of probation before emergency capias was issued, appellant cannot be resentenced on that charge). Consequently, the Delaware Supreme Court has consistently accorded trial courts wide latitude in probationary matters. Id.

Applying these principles to the instant case, the Court finds that the Superior Court had discretion under Delaware law to treat Petitioner's seven year probationary period as a single term rather than three divisible terms. Accordingly, the Superior Court properly exercised its power to revoke Petitioner's probation at any time during the total seven year probationary period. Further, the Court finds that the exercise of such discretion in probationary matters does not violate Petitioner's constitutional right against double jeopardy. See Rundle, 435 F.2d at 723.

For the reasons discussed, the Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus (D.I. 1) filed by Petitioner, Sherman A. Carter will be denied. In addition, Petitioner's Motion for Temporary Release Pending the Petition for Writ of Habeas Corpus (D.I. 6) and Petitioner's request for Appointment of Counsel (D.I. 26) will likewise be denied as moot.

An appropriate Order will be entered.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE
PETITION OF SHERMAN A.
CARTER FOR A WRIT OF
MANDAMUS.

No. 128, 1999

Submitted: April 19, 1999
Decided: April 27, 1999

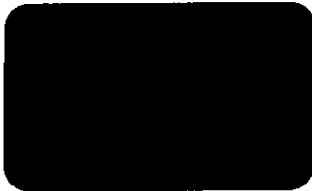
Before **VEASEY**, Chief Justice, **WALSH** and **BERGER**, Justices.

ORDER

This 27th day of April 1999, upon consideration of the petition for a writ of mandamus filed by Sherman A. Carter and the answer and motion to dismiss filed by the State of Delaware, it appears to the Court that:

(1) In June 1994, Carter was convicted in the Superior Court of possession of cocaine and two weapons offenses. Carter was initially sentenced to eight years' imprisonment, suspended after three years for five years of drug treatment and probation. In September 1994, Carter's sentence was amended to one year of imprisonment followed by seven years of probation. Carter's conviction was affirmed on appeal.¹ Carter subsequently

¹ *Carter v. State*, Del. Supr., No. 314, 1994, Veasey, C.J., 1995 WL 439234 (July 18, 1995) (ORDER).



filed for postconviction relief. The Superior Court's denial of relief was affirmed on appeal.²

(2) In 1997, Carter was thrice adjudged guilty of violating his probation and was sentenced. The third violation of probation proceeding was in December 1997. Carter was sentenced to two years' imprisonment, suspended for probation following his successful completion of a treatment program. Carter did not appeal the conviction and sentence.

(3) Complaining that the December 1997 sentence was illegal, Carter sought federal and state habeas corpus relief. By memorandum opinion dated February 10, 1999, the Delaware District Court denied Carter's federal habeas corpus petition.³ By order dated March 4, 1999, the Superior Court denied Carter's state habeas corpus petition.⁴ Carter did not file an appeal from the Superior Court's denial of habeas corpus relief. Instead, on March 29, 1999, Carter filed the pending petition for a writ of mandamus.

² *Carter v. State*, Del. Supr., No. 496, 1995, Hartnett, J., 1996 WL 145773 (Feb. 22, 1996) (ORDER).

³ *Carter v. Brewington-Carr, et al.*, D. Del., C.A. No. 98-173-JJF, Farnan, C.J. (Feb. 10, 1999).

⁴ *Carter v. Snyder*, Del. Super., C.A. No. 99M-02-074, Alford, J. (March 4, 1999) (ORDER).

(4) Carter's petition for a writ of mandamus asserts that he "has sought release by every means available" from the "illegal detention," *i.e.*, the December 1997 sentence, "that violates his constitutional rights." Carter requests that the Court issue an order "compelling the respondents to release him."

(5) In the caption of his petition for a writ of mandamus, Carter names the following individuals as respondents: "Robert Snyder, Warden, Delaware Correctional Center" and "R.L. McBride, Supervision, Records Department." In the body of his petition, Carter also names the Superior Court Judge who denied Carter's habeas corpus petition.

(6) It is well-settled Delaware law that "[t]his Court's original jurisdiction to issue a writ of mandamus is limited to instances when a respondent is a court or a judge thereof."⁵ Thus, to the extent that Carter's petition requests the issuance of a writ to a prison official, the petition manifestly fails on its face to invoke the Court's original jurisdiction.

(7) The Court will issue a writ of mandamus to a trial court only when the petitioner can show that there is the clear right to the performance

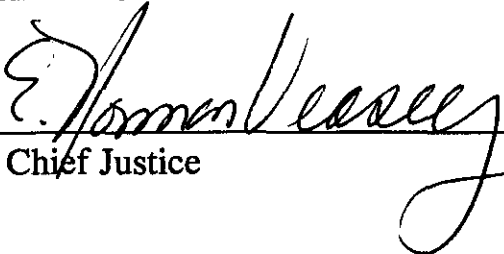
⁵ *Matter of Hitchens*, Del. Supr., 600 A.2d 37, 38 (1991).

of the duty at the time of the petition, no other adequate remedy is available, and the trial court has failed or refused to perform its duty.⁶ This Court has held repeatedly that a petition for a writ of mandamus cannot be used as a substitute for a timely-filed appeal.⁷

(8) There is no basis for the issuance of a writ of mandamus to the Superior Court in this case. Carter has not demonstrated that the Superior Court has arbitrarily failed or refused to perform a duty owed to him. Furthermore, Carter had an adequate opportunity to challenge the Superior Court's denial of habeas corpus relief in an appeal to this Court. Carter's failure to file an appeal does not give him the right now to seek relief through the extraordinary writ process.

NOW, THEREFORE, IT IS ORDERED that the State's motion to dismiss is GRANTED. The petition for a writ of mandamus is DISMISSED.

BY THE COURT:



Chief Justice

⁶ *In re Bordley*, Del. Supr., 545 A.2d 619, 620 (1988).

⁷ *See Matushefske v. Herlihy*, Del. Supr., 214 A.2d 883, 885 (1965).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SHERMAN A. CARTER,

Petitioner,

v.

STANLEY TAYLOR, Warden
and M. JANE BRADY, Attorney General of
the State of Delaware,

Respondents.

C.A. No. 98-549-JJF

Sherman A. Carter, Smyrna, Delaware.
Pro Se Petitioner.

Thomas E. Brown, Esquire, Deputy Attorney General, DELAWARE DEPARTMENT OF
JUSTICE, Wilmington, Delaware.
Attorney for Respondents.

MEMORANDUM OPINION

August 6, 1999
Wilmington, Delaware




FARNAN, Chief Judge.

Presently before the Court is a Petition Under 28 U.S.C. § 2254 For Writ of Habeas Corpus By A Person In State Custody (the "Petition") (D.I. 1) filed by Petitioner, Sherman A. Carter. For the reasons set forth below, the Petition will be dismissed.

BACKGROUND

In 1993, a grand jury indicted Petitioner on 12 charges stemming from three separate incidents. The first four charges -- second degree burglary, criminal mischief, possession of a deadly weapon during the commission of a felony and possession of a deadly weapon by a person prohibited -- arose from an alleged incident in May 1993 involving Petitioner's former girlfriend. The second set of charges -- first degree assault, possession of a deadly weapon during the commission of a felony and possession of a deadly weapon by a person prohibited -- arose from an alleged incident in August 1993 involving one of Petitioner's relatives. The third set of charges -- possession with intent to deliver narcotics, possession of narcotics within 1000 feet of a school, carrying a concealed deadly weapon, possession of a deadly weapon during the commission of a felony and possession of a deadly weapon by a person prohibited -- arose from an arrest of Petitioner on outstanding warrants in September 1993.

Prior to trial, the first four charges were severed and nolle prossed by the State. On the day Petitioner's trial was to commence, the State nolle prossed the three charges relating to the incident involving Petitioner's relative and the charges of possession of narcotics within 1000 feet of a school and possession of a deadly weapon during the commission of a felony. The State also amended the indictment to reduce the charge of possession with intent to deliver to simple possession. In June 1994, a Delaware Superior Court jury convicted Petitioner of possession of cocaine, possession of a deadly weapon by a person prohibited and carrying a concealed deadly

weapon.

Petitioner was initially sentenced to eight years imprisonment, suspended after three years imprisonment for five years of drug treatment and probation. In September 1994, the sentence was amended to one year imprisonment followed by seven years of decreasing levels of probation. On direct appeal, the Delaware Supreme Court affirmed the judgment of the Superior Court. Carter v. State of Delaware, 663 A.2d 486 (Del. 1995). Subsequently, the Superior Court denied Petitioner's application for post-conviction relief and the Delaware Supreme Court affirmed. Carter v. State of Delaware, 676 A.2d 901 (Del. 1996).

On May 28, 1997 and again on September 16, 1997, Petitioner was found guilty of violating his probation. (Superior Court Criminal Docket at Nos. 62 and 66). Petitioner did not appeal either of the convictions. On December 16, 1997, the Superior Court again found Petitioner guilty of violating his probation. (Superior Court Criminal Docket at Nos. 67 and 68). The Superior Court revoked Petitioner's probation and sentenced him to two years in prison suspended for probation following successful completion of a drug treatment program. (Superior Court Criminal Docket at No. 62).

Thereafter, Petitioner filed a petition for writ of mandamus with the Delaware Supreme Court. The state Supreme Court found that there was no basis for an issuance of a writ of mandamus to the trial court and dismissed Petitioner's application. In re Carter, No. 90,1998, 1998 WL 171110, at *1 (Del. March 25, 1998). On April 6, 1998, Petitioner filed a Petition pursuant to 28 U.S.C. § 2254 alleging that his December 16, 1997 sentence was illegal.

On February 12, 1999, the Court issued a Memorandum Opinion and Order denying the Petition. (C.A. No. 98-173-JJF, D.I. 29 and 30). Thereafter, Petitioner filed a Motion for

Amendment of Judgment (C.A. No. 98-173-JJF, D.I. 31) requesting the Court to hold an evidentiary hearing or, in the alternative, to grant Petitioner a certificate of appealability. The Court found that there was no error of law or injustice in denying the Petitioner's Section 2254 Petition, and therefore, denied the Motion for Amendment of Judgment. (C.A. No. 98-173-JJF, D.I. 35 and 36).

The instant Petition relates to the criminal charges that were nolle prossed by the State prior to the Petitioner's trial. Specifically, the Petitioner alleges (1) ineffective assistance of counsel in that his trial attorneys failed to have dismissed the allegedly false and inflated charges, which were later nolle prossed, and (2) malicious prosecution in that he was held in jail under excessive bail on allegedly false or inflated charges that were later nolle prossed. (D.I. 1). In their Answer to the Petition, the Respondents contend that the Petition is untimely pursuant to 28 U.S.C. § 2244(d), and therefore, should be dismissed. (D.I. 7 at 4-5). Alternatively, the Respondents contend that Petitioner's claims should be rejected on the merits. (D.I. 7 at 5-9).

DISCUSSION

As a threshold matter, the Court must address whether the instant Petition is untimely under the Antiterrorism and Effective Death Penalty Act of 1996 ("the AEDPA").¹ Effective April 24, 1996, the AEDPA amended 28 U.S.C. § 2254 by making habeas petitions subject to a one year statute of limitations. The relevant part of Section 2244(d) provides:

(d)(1) A 1-year period of limitation shall apply to an application for a writ of

¹ Petitioner filed the instant Petition subsequent to April 24, 1996, the effective date of the AEDPA, and therefore, the AEDPA applies to the instant Petition. Dawson v. Snyder, 988 F. Supp. 783, 803 (D. Del. 1997) (holding that amended Section 2254 applies to any habeas petition filed after effective date of AEDPA).

habeas corpus by a person in custody pursuant to the judgment of a State court.

The limitation period shall run from the latest of --

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review . . .

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d).

In applying Section 2244(d), the United States Court of Appeals for the Third Circuit has held that petitioners, whose conviction became final before April 24, 1996, are entitled to a one year “grace period” following the effective date of the AEDPA in which to file habeas motions. Burns v. Morton, 134 F.3d 109, 111 (3d Cir. 1998). Accordingly, Section 2254 petitions filed on or before April 24, 1997, may not be dismissed for failure to comply with the one year statute of limitations. Id. at 112. Petitions filed after the one year grace period; however, are subject to dismissal for failure to adhere to the new limitations period imposed by the AEDPA. United States v. McNair, Civ. A. 98-6021, Crim. A. 95-124-09, 1999 WL 281308, at *1 (E.D. Pa. May 3, 1999). The Third Circuit has recognized that the “effect of Burns v. Morton was to make . . . all other convictions in this circuit otherwise final before the effective date of the AEDPA, April 24, 1996, final on that day for purposes of calculating the [one year limitations period].” United States v. Duffus, 174 F.3d 333, 335 (3d Cir. 1999).

In the instant case, the Petitioner was convicted in June 1994, and the Delaware Supreme Court affirmed his conviction on July 18, 1995. Where, as here, a petitioner has not filed a petition for a writ of certiorari before the United States Supreme Court, the judgment of conviction becomes final on “the date on which the [petitioner’s] time for filing a timely petition for certiorari review expires.” Kapral v. United States, 166 F.3d 565, 577 (3d Cir. 1999).

Accordingly, the Petitioner's conviction became final 90 days from July 18, 1995.² Because the Petitioner's conviction was final prior to the enactment of the AEDPA, for purposes of calculating the one year limitations period, Petitioner's conviction will be deemed final as of April 24, 1996, the effective date of the AEDPA. Applying Section 2244(d) from this date, the Petitioner was required to file the instant Petition no later than April 24, 1997.

The Third Circuit has ruled that a pro se prisoner's habeas petition is deemed file at the "moment he delivers it to prison officials for mailing to the district court." Burns, 134 F.3d at 113 (extending rule in Houston v. Lack, 487 U.S. 266 (1988) to petitions filed under Sections 2254 and 2255). Here, the Petitioner does not indicate the date on which the Petition was delivered to prison officials for mailing. Absent proof of mailing, courts have held that the date of the signatures within the petition is the date on which the petition is deemed filed. See Esquilin v. Artuz, No. 97 Civ. 3310, 1998 WL 2827, at *2 (S.D.N.Y. Jan. 6, 1998) (treating date on which petition was notarized as filing date); United States v. Timber, 7 F. Supp. 2d 1356, 1361 (N.D. Ga. 1998) (treating date on which pro se prisoner signed and dated motion as filing date).

In this case, the Petition is dated September 10, 1998, which is beyond the April 24, 1997 filing deadline. Accordingly, the Court concludes that the instant Petition is untimely under Section 2244(d) and will dismiss the Petition. Because of the Court's conclusion, the Court will

² Supreme Court Rule 13 provides in pertinent part:

1. Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort . . . is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment.

not address the merits of the Petitioner's claims.

CONCLUSION

For the reasons discussed, the Petition Under 28 U.S.C. § 2254 For Writ of Habeas Corpus (D.I. 1) filed by Petitioner, Sherman A. Carter will be dismissed.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SHERMAN A. CARTER,

Petitioner,

v.

STANLEY TAYLOR, Warden
and M. JANE BRADY, Attorney General of
the State of Delaware,

Respondents.

C.A. No. 98-549-JJF

FILED

ORDER

At Wilmington this 6 day of August 1999, for the reasons set forth in the
Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. The Petition Under 28 U.S.C. § 2254 For Writ of Habeas Corpus (D.I. 1) filed by
Petitioner, Sherman A. Carter is DISMISSED.

2. Because the Court finds that Petitioner has failed to make "a substantial showing
of the denial of a constitutional right" under 28 U.S.C. § 2253(c)(2), a certificate of appealability
is DENIED.


UNITED STATES DISTRICT JUDGE



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Scu-14

STATE OF DELAWARE

V.

SHERMAN A CARTER

DOB: 08/15/50

SBI: 00102896

) CASE NO. 303X6881DI
)
) CR.A. NO. VN9309085102
) CHARGE: VIOL O/PROBATN
) ORIG. CHARGE: PDWBPP
)
)

VIOLATION OF PROBATION

NOW THIS 16TH DAY OF SEPTEMBER, 1997, IT IS THE ORDER OF THE COURT THAT:

THE DEFENDANT IS ADJUDGED GUILTY OF VIOLATION OF THE PROBATION SENTENCE ORDERED IN THE ABOVE STATED ACTION AND SUCH PROBATION IS HEREWITH:

REVOKED, AND SENTENCE IS REIMPOSED AS SHOWN HEREAFTER.

EFFECTIVE SEPTEMBER 16, 1997, THE DEFENDANT IS PLACED IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS AT SUPERVISION LEVEL 5 FOR A PERIOD OF 2 YEARS, INCLUDING CREDIT FOR ANY TIME PREVIOUSLY SERVED.

IF THE DEFENDANT IS PRESENTLY SERVING ANOTHER SENTENCE, THAT SENTENCE SHALL BE SUSPENDED UNTIL COMPLETION OF THIS SENTENCE.

THIS SENTENCE IS SUSPENDED FOR 2 YEARS AT SUPERVISION LEVEL 4 - PLUMMER CENTER. UPON SUCCESSFUL COMPLETION OF DRUG TREATMENT PROGRAM, THIS SENTENCE IS SUSPENDED FOR THE BALANCE AT SUPERVISION LEVEL 3.

THE DEFENDANT IS TO BE HELD AT SUPERVISION LEVEL 3 UNTIL SPACE IS AVAILABLE AT SUPERVISION LEVEL 4.



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	CASE NO. 30504866DI
)	
V.)	CR.A. NO. VN8508068102
)	CHARGE: VIOL O/PROBATN
SHERMAN A CARTER)	ORIG. CHARGE: TRF.IL.DR.8-20G
DOB: 08/15/50)	
SBI: 00102896)	

VIOLATION OF PROBATION

NOW THIS 16TH DAY OF SEPTEMBER, 1997, IT IS THE ORDER OF THE COURT THAT:

THE DEFENDANT IS ADJUDGED GUILTY OF VIOLATION OF THE PROBATION SENTENCE ORDERED IN THE ABOVE STATED ACTION AND SUCH PROBATION IS HEREWITH:

REVOKED, AND SENTENCE IS REIMPOSED AS SHOWN HEREAFTER.

THE DEFENDANT IS PLACED IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS AT SUPERVISION LEVEL 5 FOR A PERIOD OF 12 YEARS.

THIS SENTENCE IS SUSPENDED FOR 12 YEARS AT SUPERVISION LEVEL 3. AFTER SERVING 1 YEAR AT SUPERVISION LEVEL 3, THIS SENTENCE IS SUSPENDED FOR 11 YEARS AT SUPERVISION LEVEL 2.

THE NON-INCARCERATIVE PORTION OF THIS SENTENCE SHALL BE SERVED CONSECUTIVELY TO THE NON-INCARCERATIVE PORTION OF THE SENTENCE IMPOSED IN CR.A. NO. VN93-09-0851-02.

STATE OF DELAWARE V. SHERMAN A CARTER,
303X6881DI 30504866DI

THE FOLLOWING CONDITIONS SHALL APPLY TO THIS SENTENCE, THE
DEFENDANT SHALL:

BE EVALUATED FOR SUBSTANCE ABUSE AND FOLLOW ANY DIRECTIONS FOR
COUNSELING, TESTING, OR TREATMENT MADE BY THE PROBATION OFFICER.

BE ASSIGNED TO THE RESIDENTIAL AND/OR OUTPATIENT DRUG/ALCOHOL
TREATMENT PROGRAM UNTIL SUCH PROGRAM IS COMPLETED.

ALL PREVIOUS TERMS AND CONDITIONS IMPOSED REMAIN AS PREVIOUSLY
ORDERED.


JUDGE HAILE L. ALFORD

STATE OF DELAWARE
DEPARTMENT OF CORRECTION
BUREAU OF COMMUNITY CUSTODY AND SUPERVISION
PLUMMER COMMUNITY CORRECTION CENTER
38 TODDS LANE
WILMINGTON, DELAWARE 19802

Telephone: (302) 577-3039

FACSIMILE: (302) 577-2848

EMERGENCY CAPIAS/WARRANT

RE: Sherman Carter

DATE: 12/01/97

RACE/SEX: Black/Male

D.O.B.: 08/15/50

JUDGE/COURT: The Honorable H. Alford/SCNCC

CR. A.#: VN 9309085102

The above named offender is under SENTAC LEVEL IV supervision by the Department of Correction and is alleged to be in violation of their conditions of supervision.

I, Jessie L. Waller Sr., an employee of the Department of Correction, do hereby deputize any Sheriff, Constable, or Peace Officer of the State of Delaware to arrest and detain Sherman Carter pursuant to 11 DEL CODE, Section 4334, Subsection (b), and Section 4352, Subsection (a).

IT IS ALLEGED THAT THE FOLLOWING CONDITIONS OF SUPERVISION HAVE BEEN VIOLATED:

As to Condition #12: A Alco Sensor Breath Test conducted on 10/19/97 resulted in a .10 positive finding for alcohol.
A Urine Screen conducted on 11/20/97 returned positive for cocaine. Another Alco Sensor Breath test conducted 11/30/97 resulted in a .04 positive reading for alcohol.

As to Condition #5: Curfew checks conducted on 11/07/97 and 11/17/97 revealed that Mr. Carter was not at home.

As to Condition #2: During the month of 10/97, Mr. Carter failed to report for a scheduled group session at NET Counseling.

Signed

Jessie L. Waller, Sr., Supervised C

LEVE

Hold without bail until the Violation hearing on: 12/1/97

SO ORDERED:

Hale Alford
The Honorable H. Alford

DOC
BP
PP
PS
CF

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

V.

SHERMAN A CARTER

DOB: 08/15/50

SBI: 00102896

) CASE NO. 303X6881DI

) CR.A. NO. VN9309085103

) CHARGE: VIOL O/PROBATN

) ORIG. CHARGE: PDWBPP

VIOLATION OF PROBATION

NOW THIS 16TH DAY OF DECEMBER, 1997, IT IS THE ORDER OF THE COURT THAT:

THE DEFENDANT IS ADJUDGED GUILTY OF VIOLATION OF THE PROBATION SENTENCE ORDERED IN THE ABOVE STATED ACTION AND SUCH PROBATION IS HERewith:

REVOKED, AND SENTENCE IS REIMPOSED AS SHOWN HEREAFTER.

EFFECTIVE December 16, 1997, THE DEFENDANT IS PLACED IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS AT SUPERVISION LEVEL 5 FOR A PERIOD OF 2 YEARS.

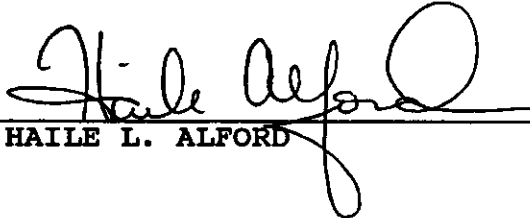
UPON SUCCESSFUL COMPLETION OF THE NEW HOPE PROGRAM OR A PROGRAM TO BE DETERMINED BY DEPARTMENT OF CORRECTION WHILE AT SUPERVISION LEVEL 5, THIS SENTENCE IS SUSPENDED FOR THE BALANCE AT SUPERVISION LEVEL 3.

FILED
PROTHONOTARY
1997 DEC 10 PM 12:29

STATE OF DELAWARE V. SHERMAN A CARTER,
303X6881DI

THE FOLLOWING CONDITIONS SHALL APPLY TO THIS SENTENCE, THE
DEFENDANT SHALL:

ALL PREVIOUS TERMS AND CONDITIONS IMPOSED REMAIN AS PREVIOUSLY
ORDERED.


JUDGE HAILE L. ALFORD

FILED
PROTHONOTARY
1999 SEP 10 PM 12:29



STATE OF DELAWARE
DELAWARE CORRECTIONAL CENTER
SMYRNA, DELAWARE 19977

TELEPHONE (302) 653 - 9261

March 4, 1999

Public Defender of The State of Delaware
Elbert N. Carvel State Office Building
Attn: Edward C. Pankowski, Jr.
Assistant Public Defender
820 N. French Street, Third Floor
P.O. Box 8911
Wilmington, DE 19801

RE: Sherman Carter
SBI #102896

Dear Mr. Pankowski:

Recently we had received a letter that you had sent to your client, Mr. Carter, who was questioning his credit for time previously served. Upon review of Mr. Carter's file, I am showing that he was given credit for time previously served per Cr. A. No. VN93-09-085103.

The date of the sentence was 12/16/97, giving credit for time served (12/1/97), per the sentencing order. We have given him credit for time served on this sentence and as of 3/4/99 Mr. Skinner's short time release date (after meritorious goodtime applied) is 9/17/99.

We can not give any other credit time unless the Judge orders us to do so.

If you have further questions, please contact me at the above number ext. 1692

Sincerely,

A handwritten signature in cursive script, reading "Rebecca L. McBride".

Rebecca L. McBride
Records Supervisor

cc: Inmate File
Francene Kobus



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

State of Delaware)

v.)

Sherman A. Carter)
DOB: 08/15/50)
Def. ID 303X6881DI)
SBI #00102896)

Cr.A. No. VN93-09-0851

RECEIVED
1999 MAR -6 P 1:53
D.C.C. RECORDS

AMENDED SENTENCING ORDER

Now this 4th day of March, 1999, it is the Order of the Court that the Sentencing Order of December 16, 1997 is hereby amended as set forth below:

Defendant is placed in the custody of the Dept. of Corrections at Level 5 for two (2) years. The defendant shall be given credit for time previously served.

In all other respects, the Sentencing Order of December 16, 1997 shall remain the same.

Haile A. [Signature]
J.

Original: Prothonotary's Office - Criminal Div.

cc: Presentence

DCC Records Dept.

Sherman Carter - DCC

Dx 11



21

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Sherman A. Carter)	
)	
v.)	C.A. No. 99M-02-074 HLA
)	
State of Delaware)	HABEAS CORPUS APPLICATION
)	
Defendant.)	

ORDER

This 4th day of March, 1999, after having considered Petitioner's application for a Writ of Habeas Corpus pursuant to 10 Del.C. §6902.

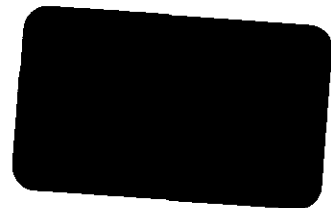
IT APPEARS:

- 1) That the Petitioner is lawfully being detained pursuant to the Violation of Probation Sentencing Order of Judge Haile Alford dated December 16, 1997.
- 2) Petitioner's argument regarding his sentence is not the proper subject matter for a Writ of Habeas Corpus.

NOW THEREFORE, Petitioner's application for a Writ of Habeas Corpus **is DENIED.**

Haile Alford

1999-4 PM 4:27
FILED
PROthonotary



DELAWARE CORRECTIONAL CENTER

MEMORANDUM

Records Dept.

TO: Francene Kobus

FROM: Rebecca L. McBride
Records Supervisor *RLM*

DATE: March 17, 1999

RE: Inmate Sherman A. Carter

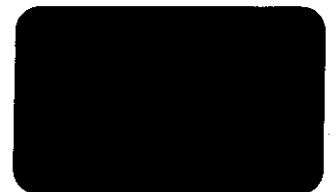
Inmate Sherman A. Carter has written several times and has received several responses back to him explaining his sentence and calculation thereof. Apparently, he wishes to file a Civil Action against Thomas Orr.

I have attached all documentation in reference to the above inmate. I had also sent a letter to the Public Defender that is handling Inmate Carter's case.

If further information is needed, please advise.

Attachments

cc: Inmate File
File



Date: 3/17/99

Inmate: Sherman Carter

SBI#: 102896

Your current short-term release date is: 9/17/99

Your current parole date is: N/A

You had violated your probation twice. You would only receive credit for when you violated and came back to the Institution on Level 5 which was 12/1/97. If you wish to request credit for time served while on Probation, you would need to go back to the Judge explaining such. Records

We would not have the exact days to give you credit while on Probation, that would need to come from the probation officer and the Judge would have to send order with those specific days to be granted to you.

Thank you,

Rebecca L. McBride
Records Supervisor

cc: Inmate file

FORM # 114

released from incarceration
8/3/00

SUI

ENT (CIS)

FOR ADM

ED INTO EVIDENCE

COUNTY:

FILING 1

CIVIL CI

CODE: _

Attorney Name: _

Firm Name: _

Office Address: _

Telephone Number: _

CAPTION

Sherman A. Carter

vs.

Tom Orr, defendant

TO: TOM ORR

FOR YOUR INFORMATION

THIS ACTION WILL BE FILED AS SOON
AS ACCOUNT STATEMENT IS RECEIVED
FROM BUSINESS OFFICE. SEE YOU AND
YOUR COUNSEL IN COURT.

Yes X No

s Doe, Plaintiff)

r with Counterclaim)

ARBITRATION _ NON-ARBITRATION _

JURY DEMAND X YES _ NO

ESTIMATED TRIAL LENGTH _ Days

Anticipated Consolidation with Another Action? YES NO

Civil Action Number: _

ATTACHMENTS TO THE PLEADINGS:

Affidavit of Demand
Affidavit of Defense
Affidavit of Mailing
Certificate of Value
Form 30 Interrogatories
Rule 3(H) Documents

RECEIVED
1999 MAR 15
A 11:05
RECORDS

TRACK ASSIGNMENT REQUESTED: (Circle One)

EXPEDITED X STANDARD COMPLEX

BRIEFLY DESCRIBE WHY CASE IS COMPLEX OR EXPEDITED (Use a Separate Sheet if Additional Space Is Required):

Defendant has refused to calculate plaintiff's jail time in compliance
with the laws applicable to sentence, causing plaintiff to be detained

IS MEDIATION AN ALTERNATIVE DISPUTE RESOLUTION OPTION IN THIS CASE? X YES _ NO

RELIEF REQUESTED

Amount of Special Damages Claimed

\$ \$300,000.00

Amount Includes a Claim for:

Property LossMedical ExpensesLoss of EarningsLiquidated DamagesX

Other - Please Specify:

Mental Anguish

ADDITIONAL CLAIMS:

Punitive DamagesX

Other Non-Liquidated Damages

NON-MONETARY RELIEF REQUESTED: Immediate release

(e.g., Declaratory Judgment)

AFFIRMATIVE DEFENSES:

1) _

2) _

3) _

4) _

5) _

SUPERIOR COURT CIVIL CASE INFORMATION STATEMENT (CIS)

FOR ADMINISTRATIVE PURPOSES ONLY. THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.

COUNTY: N K S CIVIL ACTION NUMBER: _____FILING FEE AMOUNT: _____ FEE ENCLOSED: _____ Yes X No

CIVIL CASE TYPE: (SEE INSTRUCTION PAGE FOR APPLICABLE CODE AND CASE TYPE DESIGNATIONS)

CODE: _____ TYPE: CMIS

Attorney Name: _____

Firm Name: _____

Office Address: _____

Telephone Number: _____

CAPTION

Sherman A. Carter

vs.

Tom Orr, defendant

NAME AND STATUS OF PARTY: (e.g., John Doe, Plaintiff)

Sherman A. Carter

DOCUMENT TYPE: (e.g., Complaint, Answer with Counterclaim)

Complaint

ARBITRATION _____ NON-ARBITRATION _____

JURY DEMAND X YES _____ NO

ESTIMATED TRIAL LENGTH _____ Days

Anticipated Consolidation with Another Action? YES NO

Civil Action Number: _____

ATTACHMENTS TO THE PLEADINGS:

Affidavit of Demand
Affidavit of Defense
Affidavit of Mailing
Certificate of Value
Form 30 Interrogatories
Rule 3(H) Documents

RECEIVED

1999 MAR 18
11:05
RECORDSTRACK ASSIGNMENT REQUESTED: (Circle One) EXPEDITED X STANDARD COMPLEX

BRIEFLY DESCRIBE WHY CASE IS COMPLEX OR EXPEDITED (Use a Separate Sheet if Additional Space is Required):

Defendant has refused to calculate plaintiff's jail time in compliance with the laws applicable to sentence, causing plaintiff to be detainedIS MEDIATION AN ALTERNATIVE DISPUTE RESOLUTION OPTION IN THIS CASE? X YES _____ NO

RELIEF REQUESTED

Amount of Special Damages Claimed - \$ \$300,000.00

Amount Includes a Claim for:

Property Loss Medical Expenses
Liquidated Damages X Other - Please Specify: Mental AnguishADDITIONAL CLAIMS: _____ Punitive Damages X Other Non-Liquidated DamagesNON-MONETARY RELIEF REQUESTED: Immediate release
(e.g., Declaratory Judgment)

AFFIRMATIVE DEFENSES: 1) _____ 2) _____

3) _____ 4) _____ 5) _____

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Sherman A. Carter
Plaintiff,

v.

Civil A. No. _____

Tom Orr. in his personal
Records Dept. capacity.
 Defendants.

PRAECIPE

To: Prothonotary Office
Superior Court, Public Building
1100 King Street
Wilmington, DE 19801

Please docket the attached complaint and cause service of process upon the above defendants:

Tom Orr
Delaware Correctional Center
Smyrna, DE 19977

**Delaware Correctional Center
Smyrna, DE 19977**

Dated: _____

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SHERMAN A. CARTER,
Plaintiff,

vs.

Civil Action No.

TOM ORR,
Defendant in his
personal capacity.

COMPLAINT

FIRST CAUSE OF ACTION

1. Plaintiff, Sherman A. Carter was sentenced for the original offense of PDWBPP, which carries a maximum term of 3 years incarceration pursuant to Delaware Code Title 11. The original sentence was imposed on August 4, 1994, giving credit from September 4, 1993.

2. Plaintiff served up to November 30, 1994 on the original incarceration.

3. On June 27, 1997 and remained until he was judged guilty of a technicle violation with no new charge. On September 16th court reimposed his sentence giving credit for time previously served.

4. On December 1, 1997 plaintiff was again returned to prison

for another technicle violation., and on December 16th court re-imposed a 2 year sentence suspended after completion of a program.

5. Title 11 Del.Code §3901 dictates that any prison time is to be calculated against sentence if no other sentence has been imposed.

6. The Courts properly reimpose sentences with the understanding that the Department of Corrections adequately calculate sentences pursuant to the laws of this state.

7. Defendant Tom Orr has refused to properly calculate plaintiff's time previously served, and in doing so has caused plaintiff to serve an amount of prison time that exceeds the statutory maximum established by law.

8. Plaintiff has taken numerous steps to gain his release from the illegal custody. Due process entitles inmate to an opportunity to have his claim to a particular release date meaningfully and expeditiously considered. Sample v. Diecks, 885 F.2d 1099 (1989).

9. Due process requires that a challenge to the calculation of release date³² promptly listened to. 14th Amendment U.S.C.A.

SECOND CAUSE OF ACTION

Plaintiff reallege each and every averment of paragraph 1, through 9 and hereby adds the following:

10. Plaintiff allege that the Defendant, Tom Orr, had an obligation to inquire as to the proper method of calculating plaintiff's sentence when, Defendant was provided the statute and crucial wording in place in all sentences, which was REIMPOSE and credit for time previously served.

11. Plaintiff contends that the actions of Defendant Orr were without due regard for plaintiff's right not to be held in violation of his rights.

12. Plaintiff contends that where information was provided to the Defendant Orr, he had a legal obligation to use due care in obtaining controlling guidelines for calculating sentences.

RELIEF SOUGHT

13. WHEREFORE the Plaintiff seeks damages in the amount of \$300,000.00 for Defendants' gross negligence and deliberate indifference.

dated:

signed:

Sherman A. Carter
DCC
Smyrna, DE 19977

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

THE STATE OF DELAWARE

TO: TOM ORR
RECORDS DEPARTMENT
DELAWARE CORRECTIONAL CENT.
SMYRNA, DE 19977

DUCES TECUM: You are to bring with you a copy of any and all,
written procedures that direct the actions that must be taken
in calculating sentences. Evidence of your qualifacations as
to your training and minimal requirements of DOC.

YOU ARE HEREBY COMMANDED:

To appear at the Superior Court of New Castle County at 1020
North King Street, Wilmington, DE 19801 on _____,
____, 1999.

Dated: _____

Sharon Agnew
Prothonotary

Per Deputy

Sherman A. Carter
Delaware Correctional Cent.
Smyrna, DE 19977

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

SHERMAN A. CARTER
Plaintiff,

vs.

Civil Action No.

TOM ORR,
Defendant in his
personal capacity.

MOTION IN OPPOSITION

PLAINTIFF comes now before the Honorable Court requesting that the Court not permit the Attorney General, ie, Department of Justice to represent the above cited Defendant. In support of said request the Plaintiff submits the following:

A. Delaware Code Annotated Title 29 §2504 The State Department of Justice and the Attorney General shall have the following powers, duties and authority: (3). Notwithstanding any other laws, to represent as counsel in all proceedings or actions which may be brought on behalf of or against them in their official capacity in any court, except in actions in which the State has a conflicting interest

B. The Department has no obligation to represent Defendant due to this action being persued in Defendant's personal capacity and the Department has an existing conflict due to the Constitu-

tional violation of the Plaintiff's rights.

C. However if the Department wishes to take the position that the Defendant was acting in compliance with established policy, the Plaintiff would thereby waive his opposition.

For the reasons stated by the Plaintiff, the request should be granted.

dated:

signed: _____

SUMMONS

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR New Castle COUNTY

SHERMAN A. CARTER

Plaintiff,

v.

TOM ORR in his personal
capacity

Defendant.

C.A. No.

SUMMONS

THE STATE OF DELAWARE,
TO THE SHERIFF OF New Castle COUNTY:
YOU ARE COMMANDED:

To summon the above named defendant so that, within 20 days after service hereof upon defendant, exclusive of the day of service, defendant shall serve upon plaintiff's attorney, whose address is , an answer to the complaint (and, if an affidavit of demand has been filed, an affidavit of defense).

To serve upon defendant a copy hereof and of the complaint (and of the affidavit of demand if any has been filed by plaintiff).

Dated: -

Prothonotary

Per Deputy

TO THE ABOVE NAMED DEFENDANT:

In case of your failure, within 20 days after service hereof upon you, exclusive of the day of service, to serve on plaintiff's attorney named above an answer to the complaint (and, if an affidavit of demand has been filed, an affidavit of defense), judgment by default will be rendered against you for the relief demanded in the complaint (or in the affidavit of demand, if any).

Prothonotary

Per Deputy

To: Tom Orr

March 12, 1999

Dear Sir,

I am enclosing to you a summons which is a part of a civil action inwhich I have named you personally. I need the name of your private attorney for this action. I have also completed a motion to deny you the assistance of the Department of Justice since your actions are not legal. If you chose to not provide the information requested, I will inform the court of my position that you are unrepresented.

Have a good day

Sherman A. Carter T-2

pc:file

RECEIVED
1999 MAR 15 P 12:17
D.C.C. RECORDS

RECEIVED

FEB 26 1999

To: Deputy Warden
Betty Burris
Delaware Correctional Cent.
Smyrna, DE 19977

D.C.C.
ADMINISTRATIVE SERVICE

RE: SHERMAN A. CARTER SBI#102896

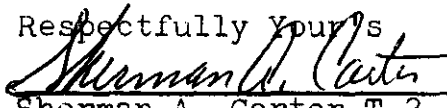
Dear Deputy Warden,

I am contacting you to request that you direct the Records Department to abide by the Delaware Code, Title 11 §3901, which states that any time served at level 5 that was not attributed to any other sentence must be calculated against the present sentence. Records has informed me that I must contact the court to get credit for time served. This was done by me, even though I am not required to take any action to insure that my sentence is calculated properly.

I am sure that if you were to contact the Attorney General's Office, someone there would concede that the duty to calculate my sentence falls on the Department of Justice and the Department of Corrections. I have since 1993 been imprisoned on three separate occasions for this same charge. I was never given a level 5 sentence for any other charge during this period. As of March 2, 1999 I will have served the statutory maximum permitted for the offense. I contacted records back during the summer providing a copy of two sentencing orders that show the incarcerations. I even filed a grievance which has not been resolved since that time.

It is my contention that as of March 2, 1999 I will be illegally held by this facility since I inform of the problem well before the injury could accrue. I would be grateful for any help in this matter.

Respectfully Yours


Sherman A. Carter T-2

RECEIVED
1999 MAR 22 P 3:55
D.C.C. RECORDS

UNTIL YOU LEARN YOUR OBLIGATION I WOULD
 APPRECIATE NO FURTHER CONTACT WITH YOU IN THIS
 MATTER AS A RIGHT

To. Tom Orr.

I received your information as to how my sentence is to be calculated. Since you are however required to act in accord with Delaware Law, I am quite interested in on what specific law you base your position. I disagree with your idiotic notion because my position is based on Title 11 § 3901. When you do not know your legal limitations, it would be wise to contact KOC's legal advisor before you subject yourself and them to what is now about to befall you. You don't hold the power that you think you do. I'll see you soon in court. I have some very interesting questions to ask you so wise.

Sherman A. Carter

T-2

PROCEDURAL DUE PROCESS REQUIRES THAT AN INMATE WITH A CHALLENGE TO THE CALCULATION OF HIS RELEASE DATE PROMPTLY BE LISTENED TO BY SOMEONE HAVING AUTHORITY TO DECIDE THE CHALLENGE OR PASS IT ON FOR FURTHER REVIEW, AND DECISION.

" YOU SHOULD HAVE CALLED FOR HELP FROM SOMEONE WISER THAN YOURSELF."